

*Robinson v. Lynch*

Exhibit Group A

Exhibit #2 – Letter from the GAO to Senator Feinstein  
(dated March 3, 2016)



United States Government Accountability Office  
Washington, DC 20548

March 6, 2015

The Honorable Dianne Feinstein  
United States Senate

Subject: Update on Firearm and Explosives Background Checks Involving Terrorist Watchlist Records

As you requested, this letter updates information on firearm and explosives background checks involving terrorist watchlist records that we presented in our May 2010 testimony and most recently updated in February 2013.<sup>1</sup> Under the Brady Handgun Violence Prevention Act and implementing regulations, the Federal Bureau of Investigation (FBI) and designated state and local criminal justice agencies use the FBI's National Instant Criminal Background Check System (NICS) to conduct checks on individuals before federal firearms licensees (gun dealers) may transfer any firearm to an unlicensed individual.<sup>2</sup> Also, to assist the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), the FBI conducts NICS background checks on individuals seeking to obtain a federal explosives license or permit.<sup>3</sup> Under federal law, there is no basis to automatically prohibit a person from possessing firearms or explosives because they appear on the terrorist watchlist.<sup>4</sup> Rather, there must be a disqualifying factor (i.e., prohibiting information) pursuant to federal or state law, such as a felony conviction or illegal immigration status.

Approximately 21.1 million background checks were run through NICS during calendar year 2013, of which about 9.3 million were processed by the FBI's NICS Section and about 11.8 million by designated state and local criminal justice agencies. In response to a recommendation in our January 2005 report, the FBI began processing all NICS background checks involving terrorist watchlist records in July 2005—including those that were initially generated via state operations—to ensure consistency in handling.<sup>5</sup> According to FBI officials, while the FBI processes these checks, states that initially generated them are required to report the final disposition of every transaction to NICS, including whether the transaction was allowed to proceed or was denied.

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<sup>1</sup>See GAO, *Terrorist Watch List Screening: FBI Has Enhanced Its Use of Information from Firearm and Explosives Background Checks to Support Counterterrorism Efforts*, GAO-10-703T (Washington, D.C.: May 5, 2010); and GAO, *Update on Firearm and Explosives Background Checks Involving Terrorist Watch List Records* (Washington, D.C.: Feb. 5, 2013).

<sup>2</sup>Brady Handgun Violence Prevention Act, Pub. L. No. 103-159, 107 Stat. 1536 (1993).

<sup>3</sup>See Safe Explosives Act, Pub. L. No. 107-296, 116 Stat. 2135, 2280 (2002) (Title XI, Subtitle C of the Homeland Security Act of 2002), as amended.

<sup>4</sup>The FBI's Terrorist Screening Center maintains the U.S. government's consolidated terrorist watchlist, which contains information about individuals known or suspected to be or have been engaged in conduct constituting, in preparation for, in aid of, or related to terrorism and terrorist activities. Applicable records from the watchlist are searched during NICS background checks.

<sup>5</sup>See, GAO, *Gun Control and Terrorism: FBI Could Better Manage Firearm-Related Background Checks Involving Terrorist Watch List Records*, GAO-05-127 (Washington, D.C.: Jan. 19, 2005).

This update provides FBI statistics for calendar years 2013 and 2014. Specifically, from January 2013 through December 2014, FBI data show that individuals on the terrorist watchlist were involved in firearm-related background checks 485 times, of which 455 (about 94 percent) of the transactions were allowed to proceed and 30 were denied, as shown in table 1.<sup>6</sup> Overall, since NICS started checking against terrorist watchlist records in February 2004, FBI data show that individuals on the terrorist watchlist were involved in firearm or explosives background checks 2,233 times, of which 2,043 (about 91 percent) of the transactions were allowed to proceed and 190 were denied.<sup>7</sup> The FBI does not know how often a firearm was actually transferred or if a firearm or explosives license or permit was granted, because gun dealers and explosives dealers are required to maintain but not report this information to the FBI.

**Table 1: Number of National Instant Criminal Background Check System (NICS) Transactions Involving Individuals on the Terrorist Watchlist, February 2004 through December 2014**

Calendar year	Valid matches	Allowed to proceed	Denied
2004 (beginning in February)	48	43	5
2005	149	141	8
2006	179	153	26
2007	287	259	28
2008	246	228	18
2009	272	250	22
2010	272	247	25
2011	142 <sup>a</sup>	130	12
2012	153 <sup>a</sup>	137	16
2013	256	240	16
2014	229	215	14
<b>Total</b>	<b>2,233<sup>b</sup></b>	<b>2,043</b>	<b>190</b>

Source: GAO analysis of FBI data.

<sup>a</sup>Because of an issue with a computer programming change, the FBI could not provide complete statistics for certain NICS background checks that were initiated by state and local agencies during calendar years 2011 and 2012. The NICS Section implemented a technical change in February 2013 to address this issue.

<sup>b</sup>The total number of NICS transactions involving individuals on the terrorist watchlist from February 2004 through December 2014 does not include complete statistics for calendar years 2011 and 2012.

As shown in table 1, because of an issue with a computer programming change, the FBI could not provide complete statistics for certain NICS background checks that were initiated by state and local agencies during calendar years 2011 and 2012. Specifically, NICS was not capturing statistics when agencies did not provide the FBI with information on whether the transactions were allowed to proceed or were denied within 24 hours of the NICS check. The FBI had automatically purged these records from NICS—consistent with federal law—and could not determine how many records had been purged.<sup>8</sup> In February 2013, the NICS

<sup>6</sup>According to the NICS Section, there were no explosives-related background checks processed through NICS during calendar years 2013 and 2014.

<sup>7</sup>Of the 2,233 transactions, 2,230 involved firearm-related background checks and 3 involved explosives checks. All 3 explosives checks were allowed to proceed. As discussed below, the total number of NICS transactions involving individuals on the terrorist watchlist from February 2004 through December 2014 does not include complete statistics for calendar years 2011 and 2012.

<sup>8</sup>In July 2004, the NICS Section implemented a provision in federal law requiring that any personal identifying information, such as name or date of birth, in the NICS database related to certain checks be destroyed within 24 hours after a transfer decision has been made. See Consolidated Appropriations Act, 2004, Pub. L. No. 108-199, § 617, 118 Stat. 3, 95.

Section implemented a technical change to allow NICS to capture and report complete data on the disposition of all transactions matched to terrorist watchlist records. According to the NICS Section, the reported data for 2013 are complete since the NICS Section manually captured data on transactions initiated by state and local agencies during January 2013.

Of the 30 NICS transactions involving individuals on the terrorist watchlist that were denied during calendar years 2013 and 2014, FBI data show that the reasons for denials included felony conviction, under indictment, adjudicated mental health, misdemeanor crime of domestic violence conviction, fugitive from justice, and controlled substance abuse.

If you or your staff have any questions about this update, please contact me at (202) 512-9627 or [maurerd@gao.gov](mailto:maurerd@gao.gov).

Sincerely yours,

A handwritten signature in black ink, appearing to read 'D. Maurer', with a long horizontal flourish extending to the right.

David C. Maurer, Director  
Homeland Security and Justice Issues